House Bill 435

By: Representative Martin of the 47th

A BILL TO BE ENTITLED

AN ACT

To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the imposition, rate, and computation of income tax, so as to provide for legislative findings and intent; to provide for an income tax credit for certain qualified business investments; to provide for definitions; to provide for conditions and limitations; to provide for powers, duties, and authority of the state revenue commissioner with respect to the foregoing; to provide an effective date; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the imposition, rate, and computation of income tax, is amended by adding a new Code section 48-7-40.27 to read as follows:

"48-7-40.27.

(a) The General Assembly finds that the welfare of the state is enhanced by a healthy entrepreneurial business environment and that ready sources of capital necessary to support this environment are not currently available in the state.

(b) The intent of this Code section is to achieve the following:

(1) To create the Angel Investor Tax Credit Program to encourage third-party investors to invest in early stage, innovative, wealth-creating businesses;

(2) To facilitate the availability of equity investment in businesses in the early stages of commercial development;

(3) To expand the economy of the state by enlarging its base of wealth-creating businesses; and

(4) To enlarge the number of high quality, high paying jobs within the state both to attract qualified individuals to move to and work within the state and to retain young people educated in Georgia.

(c) As used in this Code section, the term:

(1) 'Investment' means:

(A) A contribution of cash or cash equivalents in a qualified Georgia business for common or preferred stock or subordinated debt that is convertible into, or entitles the holder to receive upon its exercise, common or preferred stock;

(B) An interest in a partnership in which contribution of proceeds is not secured or guaranteed and is at risk or otherwise dependent solely upon the success of a qualified Georgia business and which proceeds are used solely for capital improvements, research and development, or working capital for such qualified Georgia business; and

(C) A contribution of cash or cash equivalents by a pass-through entity domiciled in this state.

provided, however, that funds constituting an investment cannot have been raised or be raised as a result of other tax incentive programs, cannot be composed of funds raised prior to January 1, 2008, and pooled or organized through capital placement agreements for the purpose of equity and venture capital investing, and cannot be composed of pooled capital in the form of hedge funds or commodities funds. Furthermore, the purchase of equity securities shall not qualify as an investment if a broker fee or commission or a similar remuneration is paid or given directly or indirectly for soliciting the purchase.

(2) 'Investor' means a taxpayer of this state who is an accredited investor as provided in Rule 501(a) of Regulation D of the Federal Securities Act of 1933.

(3) 'Net income tax liability' means net income tax liability reduced by all other credits allowed under this chapter.

(4) 'Qualified Georgia business' means a business that is domiciled in this state, employs 20 or fewer people in this state, has gross annual sales of less than $500,000.00, has not obtained during its existence more than $1 million in aggregate gross cash proceeds from the issuance of its equity or debt investments not including commercial loans from chartered banking or savings and loan institutions, has a business net worth of less than $3 million, and does not engage primarily in:

(A) Retail sales;

(B) Real estate or construction;

(C) Professional services;

(D) Gaming or gambling;

(E) Natural resource extraction;

(F) Financial, brokerage, or investment activities; or

(G) The activities of banks, savings and loan institutions, extension of credit, business brokerage, or insurance.

(d) For any investor making an investment there shall be allowed an income tax credit that shall be deductible from such investor's net income tax liability, if any, imposed by this chapter for the taxable year in which the investment was made and the following two years as provided by this Code section.

(e) For any investor that is a pass-through entity and purchases the equity securities or subordinated debt of a qualified Georgia business directly from that business there shall be allowed an income tax credit that shall be deductible from such investor's net income tax liability, if any, imposed by this chapter for the taxable year in which the investment was made and the following two years as provided by this Code section; provided, however, that no credit under this Code section shall be allowed to a pass-through entity that has current committed capital under management in excess of $5 million or to a pass-through entity that is a qualified Georgia business.

(f) Tax credits claimed pursuant to this Code section shall be allowed as follows:

(1) In the year in which the investment was made, not more than 33.3 percent of the investment;

(2) In the first year following the year in which the investment was made, not more than 33.3 percent of the investment plus the difference, if any, between the amount allowed in the first year and 33.3 percent of the investment;

(3) In the second year following the year in which the investment was made, not more than 33.4 percent of the investment plus the difference, if any, between the amount allowed in the first and second years and 66.6 percent of the investment; and

(4) If the tax credit exceeds the investor's income tax liability for the three years that the credit is taken, the excess of the tax credit over liability may be used as a credit against the investor's income tax liability in subsequent years until exhausted.

(g)(1) The aggregate amount of credit allowed an individual for one or more investments in a single taxable year under this Code section, whether directly or indirectly, shall not exceed $100,000.00.

(2) The aggregate amount of credit allowed for one or more investments in a single taxable year under this Code section, whether directly or indirectly, shall not exceed $500,000.00 if the investor is:

(A) A corporation with assets exceeding $5 million; or

(B) A trust with assets in excess of $5 million not formed to acquire the securities offered and whose purchases are managed by a sophisticated investor.

(h)(1) The credit claimed under this Code section shall be recaptured if at the close of any taxable year in the two-year period after the year of the investment:

(A) The qualified Georgia business or an interest in such business has been sold by the investor; or

(B) The investor has withdrawn the investment wholly or partially from the qualified Georgia business.

(2) The credit shall not be recaptured if the qualified Georgia business ceases business operations.

(3) The recapture under this subsection shall be equal to 25 percent of the amount of the total tax credit claimed under this Code section in the preceding taxable year. The amount of the credit recaptured shall apply only to the investment in the particular qualified business in which the investment was made. The amount of the recaptured tax credit determined under this subsection shall be added to the taxpayer's income tax liability for the taxable year in which the recapture occurs under this subsection.

(i) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions of this Code section.

(j) The total aggregate amount of all tax credits allowed to investors or pass-through entities for investments made in a calendar year shall not exceed $15 million."

SECTION 2.

This Act shall become effective on January 1, 2008, and shall be applicable to all taxable years beginning on or after that date.

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.